IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9689 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAYURDHVAJSINH GHANSHYAMSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

Mr N D Nanavati for MR TUSHAR MEHTA for Petitioner

Mr S K Patel, AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/10/2000

ORAL JUDGEMENT

The petitioner has preferred this petition under Article 226 read with Articles 14, 19 21 and 22 of the Constitution of India challenging the order of detention

dated 29.5.2000 passed by the learned District Magistrate, Surendranagar in exercise of powers conferred on him by section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. The petitioner has contended in the petition that the petitioner had submitted representation to the Union of India and that the same has not been promptly attended by the competent authority and, therefore, the detention of the petitioner is illegal. The petitioner has, therefore, prayed that the present petition be allowed and the detention order passed against the petitioner be quashed and set aside and the petitioner be ordered to be set at liberty forthwith.

3. Rule was issued in this matter and in response to the service of rule, Mr S K Patel, learned AGP appeared for respondents No.1,2, and 3. Ms. P J Davawala, learned Addl.Standing Counsel appeared for respondent no.4-Union of India. Ms. Davawala had submitted affidavit of the Under Secretary of the Union of India which is taken on record.

4. I have heard the learned Advocates for the parties and have perused the papers. Learned Sr.Advocate for the petitioner has argued at length that the father of the petitioner had tendered representation to the Union of India on 30.8.29000 and the same was disposed of by the said authority on 27.9.2000 and thereby there was a delay of nearly 28 days in disposing of the said representation. The petitioner, therefore, claims that in the above view of the matter, when the representation of the petitioner was not promptly attended to, further detention of the petitioner cannot be treated to be legal. It has also been argued that it is the valuable right of the detenu to submit effective representation against the order of detention under Article 22(5) of the Constitution of India. That when there is a right to submit representation, it is the corresponding duty of the respondents to promptly respond to the said representation. That delay in disposal of the representation is fatal if the delay has not be explained and particularly when there is an inordinate delay in disposal of the representation. That in the present case, the delay has not been explained and it has extended upto a period of 28 days. Therefore, it has been argued that the detention order against the petitioner may be quashed and set aside on the sole ground of delay in disposal of the representation.

5. Learned Addl.Standing Counsel for the Union of India has, on behalf of respondent no.4 submitted that there was no delay in disposal of the representation. It has been contended that there were two representations submitted by the petitioner. That one was submitted before the detention order was passed and the second one was submitted after detention order was passed. It has, further been contended that the second representation was almost a copy of the previous one and, therefore, it was not necessary to consider the same promptly when both the representations contained same grounds.

6. So far as the first respondent is concerned, it is not on record whether the first representation was submitted or not. Learned Sr.Advocate for the petitioner has made a statement that the petitioner has submitted hand-written representation to the Union of India and the copy was not retained. On the other hand, the copy or the original has not been produced on record by the respondent. Therefore, the first representation is not on record and hence it is not possible to compare it with the subsequent representation. At the same time, it has to be considered that the first representation would have been filed without even knowing the contents or materials of the detention order passed against the detenu. Naturally, the petitioner was not in possession of any material which was the basis of the detention order passed against him. Therefore, it would not be an effective representation.

7. At the same time, it has to be considered that the second representation has been filed on record and it is at Annexure 'C' dated 30.8.2000. If the said representation is perused, it is mentioned at page no.26, that certain documents supplied along with the grounds of detention are not legible and the petitioner had indicated them at page nos. 41, 43, 51, 57, 67,69,70,71, 73, 74, 75 and 76. The petitioner has contended that these copies were not legible and, therefore, the petitioner could not make effective representation against his detention. This would not be a part and parcel of the previous representation submitted on behalf of the petitioner before the detention order was passed. These documents came to be in possession of the petitioner only after the detention order was passed. Therefore, the petitioner could not have stated in the previous representation that these copies were not legible. It is to be seen that the petitioner has not made general statement that the legible copies are not supplied. The petitioner has specified the numbers of pages which were not legible. This could be done only

after getting custody of those documents and the petitioner would be put to custody of the said documents only after the detention order is passed and served upon the petitioner. It, therefore, cannot be said that the contents of the two representations were similar and identical and, therefore, it was not required for the respondents to promptly to dispose of the same. When there is some additional ground in the second representation and if the representation has been disposed of on the ground that the first representation was disposed of on merit and, therefore, there was no merit in the second representation, it would itself amount to non-application of mind. It is more so, when the aforesaid aspects were totally new in the second representation and, therefore, it is not possible for this court to hold that the two representation contain identical facts. On the one hand, learned Sr.Advocate for the petitioners has made a statement that the previous representation was hand-written and the copy has not been preserved by the petitioner. On the other hand, the respondents have not submitted original or copy of the previous representation. It has also to be seen that the learned Sr.Advocate for the petitioner is in a position to show the aforesaid additional facts in the second representation which could not be there in the first one and thereby he has been able to show that the two representations did not contain similar or identical facts. Therefore, it was necessary for the respondents to submit copy of the first representation in order to show that both the representations were identical and similar. This has not been done. Therefore, it is not possible for this court to hold that the second representation contained identical facts. If we go through the affidavit filed by Mr R N Tripathi, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs and Public Distribution, New Delhi, it would be clear that so far as these representations are concerned, it has been stated that the Central Government received one representation dated 30.8.2000 made by the father of the detenu and it was received by the Central Government on 11.9.2000 through the office of the District Magistrate, Surendranagar by letter dated 7.9.2000. That in this representation dated 30.8.2000, no new grounds for revocation of the detention order was made out. However, the said representation was considered and rejected by the competent authority on 27.9.2000 and the same was conveyed to the petitioner by telegram dated 28.9.2000.

8. As said above, it is not possible for this court to hold that the contents of the first representation and

the contents of the second representation were similar and identical. The first representation is not on record. On the other hand, the aforesaid aspects go to say that there was some difference in the subsequent representation. Therefore, the respondent ought to have produced the first representation also in order to show that both contained identical facts. However, this has not been done. In that view of the matter, it is not possible to hold that both the representations contained identical facts. In that view of the matter, the second representation dated 30.8.2000 was required to be dealt with independently and promptly. The affidavit shows that the second representation was received on 11.9.2000 by the office of the Union of India and it was disposed of by the competent authority on 27.9.2000. This clearly shows that admittedly there was delay of nearly 16 days in disposal of the said representation. On this aspect of the case, learned Sr.Advocate for the petitioner has relied upon a decision in the case of Rajammal v. State of Tamil Nadu (AIR 1999 SC 684). There the delay was of nearly 5 days and the concerned Minister was away from the Headquarter on tour. The Apex Court considered the said aspect of the case and found that the absence of the Minister from the Headquarter was not sufficient to explain the delay caused in disposal of the said representation. This shows that even the delay of 4 to 5 days was considered to be unexplained and inordinate, even though there was an explanation that the Minister was away from the Headquarters on tour. In the present case, admittedly there is absolutely no explanation tendered on behalf of the respondents for the period between 11.9.2000 and 27.9.2000. The only explanation is that this was a subsequent representation and it was not obligatory on the part of the respondent to decide promptly the subsequent representation containing similar and same set of facts. It is true that if the facts are similar, the subsequent representation may not be promptly disposed of by the competent authority. In the present case, it appears that the subsequent representation is not proved to be similar. It is also not proved to be a representation containing identical and similar facts which were there in the previous representation of the petitioner. Therefore, when the subsequent representation contained different or new facts, the said representation was also required to be attended to and dealt with promptly. This was not done. Applying the ratio of Rajammal's case (supra). It is apparently clear that there is inordinate and unexplained delay of 16 days in considering and disposing of the representation of the petitioner. In that view of the matter, the further detention of the petitioner cannot be

sustained and consequently the detention order has to be held to be illegal and is required to be quashed. This is on the ground that the petitioner has right to make representation against his detention and there is corresponding duty on the respondent to promptly attend to the same. This can be covered under Article 21 of the Constitution of India. In that view of the matter, in my opinion, the present detention order cannot be sustained on the aforesaid ground of delay in disposal of the representation of the petitioner and consequently, the petition is required to be allowed and the impugned detention order is required to be quashed and set aside.

9. In the result, this petition is allowed. The impugned order of detention dated 19.5.2000 passed by the District Magistrate, Rajkot is ordered to be quashed and set aside. The detenu is ordered to be set at liberty if not required in any other case. Rule is made absolute accordingly. D.S. permitted.

20.10.2000 [D P Buch, J.]
msp.